IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1976

NO. 77-89

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, ETC., et al., Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

Because of the verbose and confusing nature of the eight issues presented by Petitioner, Defendant, Harry L. Coe, Jr.,

as Executive Director of the Department of Revenue, as pursuant to Supreme Court Rule 40.3, restated the questions presented as follows:

1. Whether Plaintiff's complaint filed in the Federal District Court for the Southern District of Florida is in substance a suit to enjoin, suspend or restrain the assessment, levy or collection of a state tax so as to fall within the jurisdictional bar of 28 U.S.C. §1341, the Tax Injunction Act.

2. Whether Plaintiff has a plain, speedy and efficient remedy in the Florida State courts within the meaning of 28 U.S.C. §1341, by which the challenged tax assessment could be contested.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTES

Florida Statute 26.012(2)(e)(1974 Supp.)

> (2) [Circuit Courts] shall have exclusive original jurisdiction:
>
> (e) In all cases involving legality of any tax assessment or toll.

Florida Statute 68.01 (1973)

> Declaring tax assessment invalid.--When an assessment is made against any person, body, politic or corporate and payment is refused on an allegation of illegality of the assessment, the person, body corporate or politic may file an action in chancery setting forth the alleged illegality. The court has jurisdiction to decide the matter and if the assessment is illegal, shall declare the assessment not lawfully made.

Florida Statute 86.011 (1973)

> Jurisdiction of circuit court.--The circuit courts have jurisdiction to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render

declaratory judgments on the existence, or non-existence:

(1) Of any immunity, power, privilege or right; or

(2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent or supplemental relief in the same action.

Florida Statute 86.021 (1973)

Power to construe, etc.--Any person claiming to be interested or who may be in doubt about his rights under a deed, will, contract or other article, memorandum or instrument in writing or whose rights, status or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract

deed, will, franchise, or other article, memorandum or instrument in writing, or any part thereof, and obtain a declaration of rights, status or other equitable or legal relations thereunder.

Florida Statute 86.101 (1973)

Construction of law.--This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status and other equitable or legal relations and is to be liberally administered and construed.

Florida Statute 86.111 (1973)

Adequate remedy does not preclude.--The existence of another adequate remedy does not preclude a judgment for declaratory relief. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. The court has power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as an action in chancery.

Florida Statute 197.171(1)(2)(1974 Supp.)

Circuit court to have original jurisdiction in tax cases.--

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2).

Florida Statute 194.211 (1973)

Injunction against tax sales.-- In any tax suit, the court may issue injunctions to restrain the sale of real or personal property for any tax which shall appear to be contrary to law or equity, and in no case shall any complaint be dismissed because the tax assessment complained of, or the injunction asked for, involves personal property only.

Florida Statute 195.106 (1974 Supp.)

Department of Revenue to pass upon and order refunds.--

(1) The Department of Revenue shall pass upon and order refunds where payment has been made voluntarily or involuntarily of taxes assessed on the county tax rolls by reason of either of the following circumstances:

(a) Any over-payment;

(b) Payment where no tax was due; or

(c) Where a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer may pay the amount claimed by the tax collector to be due, and if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof.

28 U.S.C. §1341

Taxes by States. The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state.

STATEMENT OF THE CASE

Petitioner for the 1974 tax year received an assessment of $10,993,400 on 545 acres of realty owned by her in Palm Beach County, Florida. Petitioner, without any resort to the State Courts, filed a Complaint in the United States District Court for the Southern District

District of Florida seeking Federal Court review of the aforesaid ad valorem tax assessment which she alleged to be improper. Such suit prayed for temporary and permanent enjoinment of a threatened tax sale, a declaration of the 1974 state tax assessment on the realty was void, an affirmative injunction against the Palm Beach County Property Appraiser (Tax Assessor) to correct the 1974 assessment on the realty, $3,000,000 in damages and other legal and equitable relief. Respondent, Harry L. Coe, Jr., as Executive Director of the Department of Revenue, as did the other Defendants to said action, filed a Motion to Dismiss raising the Federal Tax Injunction Act, 28 U.S.C. §1341, asserting that said statute provided a jurisdictional bar to the District Court's consideration of the case on the grounds that Florida provided a plain, speedy and efficient

remedy in State Court. Upon consideration of the motions, the District Court agreed with the Defendants and dismissed Petitioner's suit,grounding such dismissal expressly on the Tax Injunction Act.

The Petitioner thereafter sought appellate review of the District Judge's ruling in the Fifth Circuit Court of Appeals. Upon review, the Fifth Circuit Court of Appeals per curiam affirmed the District Court Judge, expressly holding that Florida provided a plain, speedy and efficient remedy within the terms of the Tax Injunction Act.

Petitioner then sought the instant certiorari review before this court.

ARGUMENT

POINT I

THE DECISION BELOW CORRECTLY INTERPRETED THE SUBSTANCE OF PETITIONER'S COMPLAINT TO BE A SUIT SEEKING RELIEF FROM AN

ASSERTED OVER VALUATION OF REAL ESTATE FOR AD VALOREM TAX PURPOSES THOUGH FRAMED AS A CIVIL RIGHTS ACTION, THEREFORE, SAID ACTION WAS PROPERLY BARRED BY THE FEDERAL TAX INJUNCTION ACT.

In the Courts below, the Executive Director of the Florida Department of Revenue was made a party defendant solely in his capacity "as Executive Director of the Florida Department of Revenue" and by reason of his "failure to properly supervise Defendant Reid as required by law, and as principal revenue official of the State of Florida." It is axiomatic since the Executive Director was joined in this suit only in his official capacity, the only manner by which Petitioner's action can have relevance to him is in connection with the allegedly erroneous ad valorem tax assessment on Petitioner's realty. Before such connection can be

established, however, it is necessary that the Federal District Court first determine that Plaintiff's 1974 tax assessment was in fact and in law erroneous and that such erroneous assessment was an unconstitutional infringement on the Petitioner's right to equal protection of the law in the application of ad valorem tax statutes of the State of Florida.

Whatever the cause of action may be called by Petitioner, a civil rights act, declaratory relief action, an injunctive relief action, the District Court below was exclusively being called upon to perform, in substance, one judicial endeavor, declare Petitioner's 1974 ad valorem real property assessment void. Without this judicial declaration, no other relief prayed for by Petitioner could follow against this Respondent.

This the District Court below clearly recognized, wherein it noted:

> Calling the Complaint a civil rights action cannot conceal the fact that this entire action is inextricably intangled with Florida's tax law. Where this is true, federal courts are statutorily mandated by §1341 to follow a policy of non-intervention. The Plaintiff here seeks both injunctive relief against the county tax authorities, in addition to declaratory relief. This case is essentially one to enjoin, suspend or restrain the assessment, levy or collection of a state tax. Clearly, the reasoning of the Bland v. McHann and Kimmey v. Berkheimer cases is applicable to this lawsuit. . . . (A-71)

The District Court's determination, as affirmed by the Fifth Circuit Court of Appeals, that 28 U.S.C. §1341 bars injunctive relief against a state tax assessment is supported, not only by the clear and express language of the statute, but by the unanimous weight of judicial authority. See Tully v. Griffin, ___ U.S.___97 S.Ct. 219, 50 L.Ed. 2d 227 (1976),

Miller v. Bauer, 517 F.2d 27 (7th Cir. 1975); Tramel v. Schrader, 505 F.2d 1310 (5th Cir. 1975); Bland v. McMann, 463 F.2d 21 (5th Cir. 1972); Carter v. County Board of Education of Richmond County, Georgia, 393 F.2d 487 (5th Cir. 1960); Bussie v. Long, 383 F.2d 766 (5th Cir. 1967); and Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

The District Court's determination, as affirmed by the Fifth Circuit Court of Appeals, that 28 U.S.C. §1341 bars declaratory relief as to the validity of a state tax assessment is likewise grounded on the unanimous weight of authority. See Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 63 S. Ct. 1020, 87 L.Ed 1407 (1943); Ford Motor Credit Co. v. Louisiana Tax Commission, 440 F.2d 675 (5th Cir. 1971); City of

Houston v. Standard-Triumph Motor Co., 347 F.2d 194 (5th Cir. 1965); Charles R. Shepard, Inc. v. Monaghan, 256 F.2d 882 (5th Cir. 1958); and Evangelical Catholic Communion, Inc. v. Thomas, 373 F. Supp. 1342 (Vt. 1973), affirmed without opinion, 483 F.2d 1397 (2nd Cir. 1974).

Petitioner's assertion that the Decision below of the Fifth Circuit Court of Appeals is in conflict with the decision of the Third Circuit in Garrett v. Bamford, 538 F.2d 63 (3rd Cir. 1976), is wholly without merit. First, as is clearly noted by the Third Circuit, the basis of the complaint at issue in the Garrett case is one grounded upon allegations of intentional racial discrimination.

> The gravamen of the complaint is that the method of assessing the value of plaintiffs' property, on which real estate and school taxes are based, is intentionally

> racially discriminatory in violation of 42 U.S.C. §§1981, 1983 (1970), and the Fourteenth Amendment.
>
> Plaintiffs allege that their properties are assessed at values which are higher than the values assigned to similar properties in predominantly or exclusively white areas of Berks County. They further contend that their assessments constitute a greater percentage of their properties' actual value than do the assessments of properties in white areas generally. They claim that the result of the discriminatory assessments is that plaintiffs bear a disproportionately heavy burden in their city and county real estate and school taxes. Plaintiffs aver that this discrimination is systematic and intentional. Cf. Washington v. Davis, ___U.S.___, 96 S.Ct. 2040, 48 L.Ed.2d 597, 44 U.S.L.W. 4789 (1976).
>
> The chief method of accomplishing this discrimination, according to plaintiffs, is defendants' failure to make annual assessments of property values as required by state law. See 72 P.S. §5344(a) (Supp. 1975). Plaintiffs claim that property values in non-white areas of the county are declining, while values

> in white neighborhoods are increasing. Failure to make the annual assessments thus results in a tax based on higher than actual value in non-white areas and one based on lower than actual values in white neighborhoods. Accordingly, the principal relief plaintiffs seek is an injunction requiring defendants immediately to cause the assessment of all residential property within the county on a non-discriminatory basis and to make an annual assessment with proofs submitted to the court to demonstrate that the assessment is uniform and non-discriminatory.
> (supra at 65,66)

In the instant matter, the Petitioner has made no allegation whatsoever of any racially discriminatory intent on the part of the Respondent, Executive Director of the Florida Department of Revenue, nor has any such racial discriminatory allegation been made against any of the other Respondents to this action. Instead, Petitioner simply alleges that she has been over assessed for ad valorem tax purposes on a parcel of realty owned by her in Florida.

Secondly, the alleged racial discrimination alleged in Garrett v. Bamford was a result of what is generally referred in the state and local tax field as cyclical reassessment, i.e. where some but not all of the county or taxing district is reassessed for ad valorem tax purposes in one year with the remaining portions of the county or taxing districts reassessed in the immediately succeeding year or years. Such a situation may result in those parcels revalued in the current year being assessed at all or a higher portion of just value than those properties not reassessed thereby creating unequal taxation on a county wide basis. This failure to assess all property in the county in one year is the key element in the Garrett v. Bamford decision since it formed the basis for the Court's ruling

that Pennsylvania's administrative and judicial review remedies for individual taxpayers constituted an insufficient remedy when applied to the class of taxpayer involved. Indeed, such fact was clearly stressed by the Court in their holding:

> Applying our conclusion precisely to these proceedings, we hold that when plaintiffs allege systematic and intentional class based racial discrimination in tax assessments, Pennsylvania does not provide a 'plain speedy and efficient remedy.' Thus, a federal action seeking injunctive relief to alleviate the alleged discrimination is not barred by 28 U.S.C. §1341.

Finally, the Court in Garrett v. Bamford closely analyzed the equitable remedies available to taxpayers in the State of Pennsylvania. The Court noted that taxpayers in Pennsylvania may bring an equitable action only when they challenge the constitutionality of the

underlying tax statute. In situations where the assessment but not the underlying statute is being challenged, the Pennsylvania taxpayer must resort to an administrative appeal with judicial review therefrom which is clearly designed for an individual taxpayer and not for a class of aggrieved taxpayers. Florida taxpayers, however, either on an individual or on a class basis, are provided relief in equity upon a showing that they are bearing a disproportionate share of the ad valorem tax burden. Southern Bell Telephone and Telegraph Company v. County of Dade, 275 So.2d 4 (Fla. 1973), and City of Naples v. Conboy, 182 So.2d 412 (Fla. 1965).

Consequently, the purported defects in the tax review procedures provided by the State of Pennsylvania as stressed by the Court in Garrett v. Bamford, are

neither germaine to the issues presented by Petitioner's action nor do they exist in Florida's system of review of ad valorem tax assessment.

POINT II

FLORIDA PROVIDES A PLAIN, SPEEDY AND EFFICIENT REMEDY BY WHICH AGGRIEVED AD VALOREM TAXPAYERS MAY CHALLENGE THE ASSESSMENT OF TAXES UPON THEIR REAL PROPERTY.

The Fifth Circuit Court of Appeals in the case of Carson v. City of Fort Lauderdale, 293 F.2d 337 (5th Cir. 1961), unequivocally held that Florida provided a plain, speedy and efficient remedy within the meaning of 28 U.S.C. §1341. The Court ruled:

> To mention only a few of the numerous Florida Statutes that provide plain, speedy and efficient remedy for the plaintiffs in this case, the Court first calls attention to Florida Statutes, Section 196.01, 1959, F.S.A., which provides:
>
> 'Courts in chancery in this state shall have jurisdiction in

> all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the constitution and laws of Florida, and shall render decrees setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law * * *'
>
> The Florida Declaratory Decree Act, Florida Statutes, Section 87.01 et seq., F.S.A., provides clearly a plain, speedy and efficient remedy to test the right of the defendant city to proceed with its sewer program. Section 87.12 of the Declaratory Decree Act provides:
>
> 'The circuit court may order a speedy hearing of an action for a declaratory decree, judgment or order and may advance it on the calendar.'
>
> While other laws of the State could be referred to, this is sufficient on this point.

The same statute mentioned by the Fifth Circuit Court in the first paragraph of the above quote, F.S. 196.01, 1959, F.S.A., is now found in

F.S. 194.171(1) and F.S. 26.012(2)(e).

The Florida Declaratory Decree Act cited in the third paragraph of the above quote, F.S. 87.01, et seq., is now found in F.S. 86.011, et seq., and the specific provision of the Declaratory Decree Act cited by the Court, F.S. 87.02, is now found in F.S. 86.111.

Hence, the same statutory framework cited by the Fifth Circuit Court in Carson v. City of Ft. Lauderdale, supra, in holding that Florida provides a plain, speedy and efficient remedy continues to this day. It therefore follows that the same rationale used by the Court in Carson, supra, at 339, namely "While other laws of the State could be referred to, this is sufficient on this point," likewise continues.

Florida, in fact, provides clear statutory remedies for judicial review of or other challenges to tax assessments

in addition to the administrative remedies cited in the Opinion of the District Court below. (A-24a-25a) First, as to assessments deemed "voidable," i.e., "those made in good faith but which are irregular or unfair," Lake Worth Towers, Inc. v. Gerstung, 262 So.2d 1 (Fla. 1972), F.S. 194.171(1) permits them to be challenged in circuit court within 60 days of certification of the tax roll as provided in F.S. 194.171(2). The taxpayer as a pre-requisite to such a challenge is, pursuant to F.S. 194.171(3), required to pay only those taxes admitted to be due. Failure to file suit within the 60 day period, after which state courts lost subject matter jurisdiction of the action,does not result however in the loss of a plain, speedy and efficient

state remedy so as to invest a federal court with jurisdiction. Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

Second, as to "void" assessments, i.e., assessments not authorized by law, where the property is not subject to the tax assessed or where the tax roll is illegal due to some affirmative wrongdoing by the taxing official, Lake Worth Towers, Inc. v. Gerstung, supra, challenge is again permitted in circuit court, pursuant to F.S. 194.171(1), with the taxpayer required under F.S. 194.171(3) to pay only the taxes admitted to be due, F.S. 194.171(4). Compliance with the 60 day time period found in F.S. 194.171(2), however, is not required.

Third, F.S. 195.106 permits the taxpayer to pay the assessment and file for a refund.

Consequently, it simply cannot be said that Florida fails to provide to Petitioner and other aggrieved taxpayers a "plain, speedy and efficient remedy" within the meaning of 28 U.S.C. §1341.

Petitioner finally contends in support of her argument that Florida does not provide a plain, speedy and efficient remedy to aggrieved ad valorem taxpayers that recent decisions of the Supreme Court of Florida hold that equality is not necessary in real estate taxation thus contradicting the standard of both fair and equal taxation required by this Court in Sioux City Bridge v. Dakota County, 260 U.S. 441 (1923). Petitioner's argument apparently is that since Florida requires ad valorem real property taxes to be imposed upon the full just value of the property, the purported decisional

law of this State provides that taxpayers assessed at full value may not complain of their assessment and relief may not be granted in the form of a reduction of the assessment unless the taxpayer is assessed in an amount above full cash value of the property. This, however, is simply not the rule followed in Florida.

In Southern Bell Telephone and Telegraph Company v. County of Dade, 275 So.2d 4 (Fla. 1973), the taxpayer pled and proved that its taxable property was being assessed at full market value while all other property within the taxing district was being assessed at approximately 80% of just value. In such situation, the Florida Supreme Court upon review, held that a cause of action had been stated and that the taxpayer was entitled to relief.

In Dade County v. Salter, 194 So. 2d 587 (Fla. 1966), the taxpayer pled that he was being assessed at below full market value but at a higher percentage of market value than all property in the taxing district. The Florida Supreme Court upon review held that the taxpayer had pleaded a cause of action for relief upon the allegation that all property in the county was assessed at 47% of full value while the taxpayer's property was assessed at 87% of full cash value.

These cases clearly point out that a taxpayer who is assessed at a substantially higher level than all other property in the taxing district is entitled to relief by way of reduction of such taxpayer's assessment and is not relegated to seeking an upward valuation of all the other property. See also Schooley v.

Sunset Realty Corporation, 185 So.2d 1 (2 DCA Fla. 1966); Banks v. Schooley, 290 So.2d 135 (2 DCA Fla. 1974); and Deltona Corporation v. Bailey, 336 So. 2d 1163 (Fla. 1976).

CONCLUSION

For the foregoing reasons, it is respectfully submitted on behalf of Respondent, Harry L. Coe, Jr., Executive Director of the Florida Department of Revenue, that Petition for Writ of Certiorari filed in this matter be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari of Respondent, Harry L. Coe, Jr., Executive Director, Florida Department of Revenue, has been sent by U.S. mail this 12 day of August, 1977, to:

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